

REMARKS

Claims 1-26 are pending in the present application and have been rejected. The claims have been amended as indicated above and support for the amendments can be found, *inter alia*, at paragraphs [0029-0030] and [0039] of the original specification.

Claim Rejection: 35 U.S.C. § 102(b)

The Office has rejected claims 18-26 under 35 U.S.C. § 102(b) as being anticipated by Scott (U.S. Patent No. 5316246) for the reasons noted on page 2 of the Office Action. Applicant respectfully traverses this rejection.

All of the rejected claims contain the limitation that a hose clamp is clamped to the hose. The Office, however, has not shown that Scott describes such a limitation. The Office argues that Scott teaches a hose for an IV solution and a “clamp 11” attached to the hose wherein the clamp has a marking surface adapted to receive a tape or label that identifies the medication flowing through the hose.

Applicant respectfully disagrees with the Office’s interpretation of Scott. This reference describes a holder 10 that has a plurality of clips 11 that are used to secure the IV tubing. The clips 11 are structured to provide a frictional grasping of the tubing to prevent it from falling out, but not so much friction that the tubing is not readily released from the clips. *See column 3, lines 28-33*. Based on such a disclosure, the skilled artisan would have understood that component 11 of the holder 10 is exactly what Scott discloses: a clip, and not a clamp. Moreover, the skilled artisan would understand that the holder 10 is not clamped onto the IV hose since it appears from

the Figures and the accompanying text that the holder merely secures the IV hose without any type of clamping action.

In reply to these arguments, the Office argued that a “clamp” is a device, usually of some rigid material, for strengthening or supporting objects or fastening them together. Using that definition, the Office categorizes that holder 10 of the Scott device as containing end clamp 12 or intermediate clamps 11. Applicant continues to disagree that the skilled artisan would have considered the holder 10 as a clamp since it only grasps the tubing by friction to prevent it from falling out, but not so much friction that the tubing is not readily released from the clips. *See column 3, lines 28-33.*

Nevertheless, in an effort to expedite prosecution, Applicant has amended the rejected claims to require that the hose clamp is clamped on the hose by moving a first member of the hose clamp closer to a second member of the hose clamp. And the Office has not shown that the holder 10 of the Scott device contains such a feature.

Thus, the Office has not shown that Scott anticipates each and every limitation in the rejected claims. Accordingly, Applicant requests withdrawal of this ground of rejection.

Claim Rejection: 35 U.S.C. § 102(b)

The Office has rejected claims 1-17 under 35 U.S.C. § 102(b) as being anticipated by Wolfson (U.S. Patent No. 5,281,228) for the reasons noted on pages 2-3 of the Office Action. Applicant respectfully traverses this rejection.

All of the rejected claims contain the limitation that an identification device is being used with a hose clamp which, in some claims, is attached to a hose. The Office argues that

component 62 of Wolfson is a hose clamp. Applicant respectfully disagrees with this interpretation of Wolfson. The Wolfson patent is riddled with references to the fact that the identification member 66 and clamp 62 of the device of Wolfson is to be used with an umbilical cord. *See Title and Abstract*. Indeed, Wolfson describes that clamp 62 is an “umbilical” clamp 62, not a hose clamp. *See column 2, lines 41-68*. And the Office has not pointed to any disclosure in Wolfson that would have taught the skilled artisan that these devices could be used to identify and clamp a hose instead of an umbilical cord. *See also, claims 1-5*.

The Office argues that claim 1 does not recite a hose in combination with the identification device since attaching the identification device to a hose is an “intended use” and the Applicant has not pointed to any structure of Wolfson that precludes it from being used on a hose. To begin with, the limitation that the identification device is attached to a hose using a hose clamp is not an intended use since it recites an actual use of the device.

Further, the burden does not rest on Applicant to show why the Wolfson device could not be used with a hose. Rather, the burden remains on the Office to show why the skilled artisan would have used the clamp 62 with a hose instead of the disclosed umbilical cord. Yet to date, the Office has only argued that the clamp 62 could be used on a hose since an umbilical cord and a hose are elongated, flexible items. Such an argument borders on the realm of an obviousness determination, and not anticipation. Further, such an argument ignores the numerous differences between a hose and an umbilical cord, namely, diameter, material of manufacture, the contained fluid, etc.

Nevertheless, in an effort to expedite prosecution, some of the current claims contain the limitation that the identification device can be installed and removed without interfering with the

flow of fluid through the hose. But installing/removing the identification device 66 of Wolfson would interfere with the blood flow through umbilical cord since the clamp 62 has to be in an open position for the device 66 to be installed or removed. *See Figure 3*. If the clamp 62 is in a closed position (where the blood flow is stopped) and the device needs to be installed, it would have to be opened for the device 66 to be installed. Such a change in the clamp would interfere with the flow of fluid.

Thus, the Office has not shown that Wolfson anticipates each and every limitation in the rejected claims. Accordingly, Applicant requests withdrawal of this ground of rejection.

Claim Rejection: 35 U.S.C. § 102(e)

The Office has rejected claims 1-9, 11, and 13 under 35 U.S.C. §102(e) as being anticipated by Schweikert (U.S. Published Application No. 2003/006218) for the reasons noted on pages 3-4 of the Office Action. Applicant respectfully traverses this rejection.

For the reasons of record, Applicant continues to disagree that the Office has met its burden of substantiating anticipation under 35 U.S.C. §102 of the rejected claims. In an effort to expedite prosecution, though, Applicant has amended the rejected claims with the limitation previously recited in claim 12. Claim 12 was not rejected by the Office over Schweikert.

Thus, the Office has not shown that Schweikert anticipates each and every limitation in the rejected claims. Accordingly, Applicant requests withdrawal of this ground of rejection.

CONCLUSION

For the above reasons, Applicant respectfully requests withdrawal of the pending grounds of rejection and allowance of the pending claims.

If there is any fee due in connection with the filing of this Amendment, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 50-0843.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ken Horton", written over a horizontal line.

Kenneth E. Horton
Reg. No. 39,481

October 14, 2009